



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA-2013-0274]

RIN 2126-AB62

Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends its Hazardous Materials Safety Permits rules to update the current incorporation by reference of the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.” The rules currently reference the April 1, 2012, edition of the out-of-service criteria and through this final rule, FMCSA incorporates the April 1, 2013, edition.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Brian Routhier, Mechanical Engineer, Federal Motor Carrier Safety Administration, Office of Policy, 1200 New Jersey Avenue SE., Washington, DC 20590-0001, by telephone at (202) 366-1225 or via email brian.routhier@dot.gov. Office hours are from 8 a.m. to 4:30 p.m. e.t., Monday through

Friday, except Federal holidays. If you have questions on viewing the docket, contact Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

I. Legal Basis for the Rulemaking

Congress has enacted several statutory provisions to improve the safety of hazardous materials transported in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(e), relating to inspections of motor vehicles carrying hazardous material and 49 U.S.C. 5109, relating to motor carrier safety permits, it has required the Secretary of the Department of Transportation to promulgate regulations as part of a comprehensive safety program on hazardous material safety permits. The FMCSA Administrator has been delegated authority under 49 C.F.R. 1.87 to carry out the rulemaking functions vested in the Secretary of Transportation. Subsequently, FMCSA has promulgated regulations to address the Congressional mandate. Such regulations on hazardous materials are the underlying provisions that have utilized material incorporated by reference discussed in this notice.

The Administrative Procedure Act (APA) (5 U.S.C. 553) specifically provides that adherence to its notice and public comment rulemaking procedures are not required where the Agency finds there is good cause (and incorporates the finding and a brief statement of reasons to support the finding in the rules issued) to dispense with such procedures. Generally, good cause exists where the Agency determines that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest. Ibid. This document updates an incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b)(1). The revision does not impose new

requirements or substantively change the Code of Federal Regulations. For these reasons, the FMCSA finds good cause that notice and public comment procedures are unnecessary.

II. Background

Currently, 49 CFR 385.415 prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b)(1) requires that motor carriers must ensure a pre-trip inspection be performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Parts 173.403.” With regard to the specific edition of the out-of-service criteria, 49 CFR 385.4, as amended on October 1, 2012 (77 FR 59818) references the April 1, 2012, edition. Today’s final rule amends § 385.4 by replacing the reference to the April 1, 2012 edition date with the new edition date of April 1, 2013.

FMCSA reviewed the April 1, 2013, edition and determined there are no substantive changes that would result in motor carriers being subjected to a new standard. Because the CVSA discontinued the printing and distribution of the 2012 edition, it is necessary to update the reference to ensure that motor carriers and enforcement officials have convenient access to the inspection criteria that are referenced in the rules.

III. Regulatory Analyses

Executive Order (E.O.) 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this action is not a significant regulatory action within the meaning of E.O. 12866, as supplemented by E.O. 13563 (76 FR 3821, January 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). The Office of Management and Budget (OMB) did not review this document. FMCSA expects the final rule will have no costs; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued a notice of proposed rulemaking prior to this action. FMCSA has determined that it has good cause to adopt the rule without notice and comment.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Mr. Brian Routhier, listed in the **For Further Information Contact** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small

Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

Unfunded Mandates Reform Act of 1995

The final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, et seq.), that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$143.1 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

E.O. 13132 (Federalism)

A rulemaking has implications for Federalism under Section 1(a) of E.O. 13132 if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on State or local governments. FMCSA analyzed this action in accordance with Executive Order 13132. This final rule does not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of Executive Order 13132.

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this final rule.

National Environmental Policy Act

FMCSA analyzed this final rule for the purpose of ascertaining the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and our Environmental Procedures Order 5610.1, issued March 1, 2004 (69 FR 9680). This final rule is categorically excluded from further analysis and documentation under the Categorical Exclusion (CE) in paragraph 6(b) of Appendix 2 of FMCSA Order 5610.1. This CE addresses minor revisions such as found in this rulemaking; therefore preparation of an environmental assessment or environmental impact statement is not necessary.

The FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it will have no effect on air emissions.

E.O. 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this final rule in accordance with E.O. 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were a “disproportionate” and “high and adverse impact” on minority or low-income populations. FMCSA analyzed this action under NEPA and found the action to be Categorically Excluded from analysis due to the lack of impact to the environment. This final rule simply updates an incorporation by reference and would not result in high and adverse environmental impacts.

E.O. 13211 (Energy Effects)

FMCSA has analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a “significant energy action” under that Executive Order because it is not a “significant regulatory action” under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the rule does not require a Statement of Energy Effects under E.O. 13211.

E.O. 13045 (Protection of Children)

FMCSA analyzed this action under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. FMCSA determined that this final rule will not create an environmental risk to health or safety that may disproportionately affect children.

E.O. 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 12630 (Taking of Private Property)

This rule will not affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt its own technical standards, there is no need to submit a separate statement to OMB on this matter.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108-447, Division H, Title I, 118 Stat. 2809 at 3268, Dec. 8, 2004) requires DOT and certain other Federal agencies to

conduct a privacy impact assessment of each rule that will affect the privacy of individuals. Because this final rule will not affect the privacy of individuals, FMCSA did not conduct a separate privacy impact assessment.

List of Subjects in 49 CFR Part 385

Administrative practice and procedure, Highway safety, Incorporation by reference. Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA is amending 49 CFR chapter III, part 385 as set forth below:

PART 385--SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901-13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103-311; Sec. 408, Pub. L. 104-88; Sec. 350 of Pub. L. 107-87; and 49 CFR 1.87.

2. Revise § 385.4(b)(1) to read as follows:

§ 385.4 Matter incorporated by reference.

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(b) * * *

(1) “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403,” April 1, 2013; incorporation by reference approved for § 385.415(b).

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Issued under the authority of delegation in 49 CFR 1.87 on: September 5, 2013

Anne S. Ferro
Administrator

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